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January 12, 2005

VIA HAND DELIVERY

Chairman Pat Miller
c/o Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges So As to Permit It to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful In Furnishing Water Service to Its Customers, Docket No. 04-00288.

Dear Chairman Miller:

Enclosed please find the original and thirteen (13) copies of Tennessee American Water Company's Motion to Compel Consumer Advocate and Protection Division of The Attorney General for The State of Tennessee to Provide Responses to Second Set of Discovery Requests for filing in the above-referenced docket.

Should you have any questions with respect to this filing, please do not hesitate to contact me at the telephone number listed above.

Sincerely



J. Davidson French

JDF/tn
Enclosure

cc: Certificate of Service List
Mr. Paul Diskin
Mr. Michael Miller
T. G. Pappas, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS**

Docket No. 04-00288

**TENNESSEE AMERICAN WATER COMPANY'S MOTION TO COMPEL
CONSUMER ADVOCATE AND PROTECTION DIVISION OF THE ATTORNEY
GENERAL FOR THE STATE OF TENNESSEE TO PROVIDE RESPONSES TO
SECOND SET OF DISCOVERY REQUESTS**

On January 5, 2005, Petitioner Tennessee American Water Company ("Petitioner" or "TAWC") served its Second Discovery Requests on the Consumer Advocate and Protection Division of the Attorney General for the State of Tennessee ("CAPD"). There were three discovery requests. A copy of the Second Discovery Requests is attached hereto as Exhibit A.

On January 11, 2005, the CAPD served its responses on the TAWC. A copy of the responses is attached hereto as Exhibit B. The TAWC submits that the CAPD's responses to Discovery Request No. 15 and Discovery Request No. 16 are insufficient and evasive. The relevant requests and responses stated:

Discovery Request No. 15: If the CAPD relies on any facts that were not specifically identified or discussed in the direct testimony that has been submitted on behalf of the CAPD in this proceeding, whether related to issues of credibility or any other issue, to support your contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase

in rates, made by TAWC in TRA Docket No. 04-00288 should not be approved by the Tennessee Regulatory Authority ("TRA"), identify or state each such fact with specificity.

Response: Subject to and without waiving any objections stated above, the Consumer Advocate responds to the specific request as follows: See enclosed documents and CD (where document is available in electronic format). In addition, the Consumer Advocate may rely on the information and documents filed and contained within TRA Docket Nos 04-00288, 03-00118, and 99-00891.

Discovery Request No. 16: If the CAPD relies on any documents, photographs, or any other articles or things whatsoever that were not attached to the direct testimony that has been submitted on behalf of the CAPD in this proceeding, whether as to issues of credibility or any other issue, to support the CAPD's contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 04-00288 should not be approved, produce each such document, photograph, or any other article or thing whatsoever.

Response: Subject to and without waiving any objections stated above, the Consumer Advocate responds to the specific request as follows: See response to Discovery Request No. 15, above.

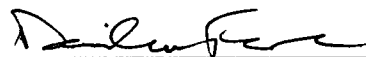
With its requests, the TAWC tried to ensure that, prior to the hearing, it would be aware of all of the material facts or documents on which the CAPD was relying in support of its arguments in this proceeding. The CAPD did produce certain documents. However, it also stated that it "may" rely on unspecified information and documents contained in the files of this and two previous TRA dockets involving TAWC. With this vague response, the CAPD has essentially directed the TAWC to numerous and voluminous documents and indicated that there

might be some relevant information contained in those documents on which the CAPD "may rely." The TAWC submits that these responses are insufficient and evasive. If, in support of its arguments in this proceeding, the CAPD is relying on material facts or documents that have not been disclosed in connection with the direct testimony that has been submitted on behalf of the CAPD, the TAWC is entitled to know about those facts or documents. The TAWC's requests do not infringe upon any privilege, and they are not seeking information that may be the subject of unanticipated rebuttal testimony. Simply put, the TAWC sought to know all material facts or documents upon which the CAPD is relying, and it is not proper to leave TAWC guessing as to the answer.

In an attempt to resolve this discovery dispute, counsel for the TAWC spoke with Mr. Timothy Phillips on January 12, 2005. Mr. Phillips declined to modify the CAPD's responses or to provide any additional information.

Thus, the TAWC respectfully requests an Order requiring the CAPD to provide full and complete responses to the above-referenced requests.

Respectfully submitted,



J. Davidson French (#15442)

R. Dale Grimes (#6223)

T. G. Pappas (#2703)

BASS, BERRY & SIMS PLC

AmSouth Center

315 Deaderick Street, Suite 2700

Nashville, TN 37238-3001

(615) 742-6200

Counsel for Petitioner

Tennessee American Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Compel has been served via the method(s) indicated, on this the 12th day of January, 2005, upon the following:

<input type="checkbox"/> Hand	Michael A. McMahan, Esq.
<input checked="" type="checkbox"/> Mail	Phillip A. Noblett, Esq.
<input checked="" type="checkbox"/> Facsimile	Lawrence W. Kelly, Esq.
<input type="checkbox"/> Overnight	Nelson, McMahan & Noblett
	801 Broad Street, Suite 400
	Chattanooga, TN 37402
<input checked="" type="checkbox"/> Hand	Timothy C. Phillips, Esq.
<input type="checkbox"/> Mail	Vance L. Broemel, Esq.
<input checked="" type="checkbox"/> Facsimile	Office of the Attorney General
<input type="checkbox"/> Overnight	Consumer Advocate and Protection Division
	P.O. Box 20207
	Nashville, TN 37202
<input checked="" type="checkbox"/> Hand	Henry M. Walker, Esq.
<input type="checkbox"/> Mail	Boult, Cummings, Conners & Berry, PLC
<input checked="" type="checkbox"/> Facsimile	Suite 700
<input type="checkbox"/> Overnight	1600 Division Street
	P.O. Box 340025
	Nashville, TN 37203
<input type="checkbox"/> Hand	David C. Higney, Esq.
<input checked="" type="checkbox"/> Mail	Grant, Konvalinka & Harrison, P.C.
<input checked="" type="checkbox"/> Facsimile	633 Chestnut Street, 9 th Floor
<input type="checkbox"/> Overnight	Chattanooga, TN 37450



EXHIBIT A

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

RECEIVED
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IN RE:)
)
PETITION OF TENNESSEE AMERICAN)
WATER COMPANY TO CHANGE AND)
INCREASE CERTAIN RATES AND)
CHARGES SO AS TO PERMIT IT TO)
EARN A FAIR AND ADEQUATE RATE)
OF RETURN ON ITS PROPERTY USED)
AND USEFUL IN FURNISHING WATER)
SERVICE TO ITS CUSTOMERS)

T.R.A. DOCKET ROOM
Docket No. 04-00288

**SECOND REQUEST FOR DISCOVERY FROM TENNESSEE AMERICAN WATER
COMPANY TO CONSUMER ADVOCATE AND PROTECTION DIVISION OF THE
ATTORNEY GENERAL FOR THE STATE OF TENNESSEE**

Petitioner Tennessee American Water Company ("Petitioner" or "TAWC") serves these Second Discovery Requests on the Consumer Advocate and Protection Division of the Attorney General for the State of Tennessee ("CAPD"), and asks that CAPD provide responses to each request separately, fully, and in writing. CAPD is also called upon to produce all documents and evidence requested herein. Furthermore, CAPD is called upon to fulfill its duty to supplement its answers as far in advance of the beginning of any hearing as is reasonably possible if it has learned that any response is in any material respect incomplete, incorrect or has changed.

In these discovery requests, the terms "document" or "documents" or "documentation" refers to all written, reported, recorded or graphic matter (including all drafts, originals and nonconforming copies that contain deletions, insertions, handwritten notes or comments, and the like) however produced or reproduced to any tangible or intangible, permanent or temporary record and, without limitation, shall include the following: all letters, correspondence, records of conferences or meetings, memoranda, notes, printed electronic mail ("e-mail"), telegrams, telephone logs, teletypes, telexes, banking records, notices of wire transfer of funds, canceled

checks, books of account, budgets, financial records, contracts, agreements, invoices, speeches, transcripts, depositions, press releases, affidavits, communications with government bodies, interoffice communications, working papers, newspaper or magazine articles, computer data, tax returns, vouchers, papers similar to any of the foregoing, and any other writings of every kind and description (whether or not actually used) and any other records from which information can be obtained and translated into reasonably usable form, including without limitation, e-mail, voice recordings, video and audio recordings, photographs, films, tapes and other data compilations.

DISCOVERY REQUEST NO. 15:

If the CAPD relies on any facts that were not specifically identified or discussed in the direct testimony that has been submitted on behalf of the CAPD in this proceeding, whether related to issues of credibility or any other issue, to support your contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 04-00288 should not be approved by the Tennessee Regulatory Authority ("TRA"), identify or state each such fact with specificity.

RESPONSE:

DISCOVERY REQUEST NO. 16:

If the CAPD relies on any documents, photographs, or any other articles or things whatsoever that were not attached to the direct testimony that has been submitted on behalf of the CAPD in this proceeding, whether as to issues of credibility or any other issue, to support the CAPD's contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 04-00288 should not be approved, produce each such document, photograph, or any other article or thing whatsoever.

RESPONSE:

DISCOVERY REQUEST NO. 17:

Provide in electronic media all exhibits, schedules, work papers, and other documents that were attached to or produced in connection with the direct testimony that the CAPD submitted in this proceeding, and provide in electronic media and in hard copy all underlying work papers upon which those exhibits, schedules, work papers, and other documents were based or were otherwise derived.

RESPONSE:

Respectfully submitted,



J. Davidson French (#15442)

R. Dale Grimes (#6223)

T. G. Pappas (#2703)

BASS, BERRY & SIMS PLC

AmSouth Center

315 Deaderick Street, Suite 2700

Nashville, TN 37238-3001

(615) 742-6200

Counsel for Petitioner

Tennessee American Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Discovery from Tennessee American Water Company to the Consumer Advocate and Protection Division of the Attorney General for the State of Tennessee has been served via the method(s) indicated, on this the 5th day of January, 2005, upon the following:

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Michael A. McMahan, Esq.
Phillip A. Noblett, Esq.
Lawrence W. Kelly, Esq.
Nelson, McMahan & Noblett
801 Broad Street, Suite 400
Chattanooga, TN 37402

- ☒ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Timothy C. Phillips, Esq.
Vance L. Broemel, Esq.
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202

- ☒ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

Henry M. Walker, Esq.
Boult, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
Nashville, TN 37219

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

David C. Higney, Esq.
Grant, Konvalinka & Harrison, P.C.
633 Chestnut Street, 9th Floor
Chattanooga, TN 37450



EXHIBIT B

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS**

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DOCKET No. 04-00288

**CONSUMER ADVOCATE'S RESPONSE TO TENNESSEE AMERICAN WATER
COMPANY'S SECOND REQUEST FOR DISCOVERY**

Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate" or "CAPD"), and hereby submits the following responses to Discovery Requests propounded by Tennessee American Water Company ("TAWC" or "Company").

GENERAL OBJECTIONS

1. The Consumer Advocate objects to the definitions and instructions contained in the data requests to the extent that the definitions and instructions attempt to impose on the Consumer Advocate a burden or obligation greater than that required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

2. The Consumer Advocate objects to the data requests to the extent they call for information and the production of documents which are protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or

protection. In particular, the Consumer Advocate objects to requests seeking its legal research related to pertinent statutes, rules, orders and case law. The Consumer Advocate objects to the data requests to the extent that the Company is attempting to impose on the Consumer Advocate obligations with regard to identification of privileged documents beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

3. The Consumer Advocate objects to the Company's data requests to the extent they seek information relating to matters not at issue in this litigation or to the extent they are not reasonably calculated to lead to the discovery of admissible evidence. By providing information in response to these requests, the Consumer Advocate does not concede that such information is relevant, material or admissible in evidence. The Consumer Advocate reserves all rights to object to the use of such information as evidence.

4. The Consumer Advocate objects to the Company's data requests to the extent that the Company is attempting to require the Consumer Advocate to provide information and produce documents beyond those in its possession, custody or control as that phrase is used in the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

5. The Consumer Advocate objects to the Company's data requests to the extent they seek information and documents that are readily available through public sources or are in the Company's own possession, custody or control. It is unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company.

6. The Consumer Advocate's objections and responses to these requests are based on information now known to it. The Consumer Advocate reserves the right to amend, modify or supplement its objections and responses if it learns of new information.

7. The Consumer Advocate's responses to these requests are made without waiving or intending to waive the right to object to the use of any information provided in this response in any subsequent proceeding or trial of this or any other action. The Consumer Advocate's responses to these requests are also not a waiver of any of the foregoing objections or any objections it has made or may make with respect to any similar, related, or future data request, and the Consumer Advocate specifically reserves the right to interpose any objection to further requests notwithstanding any response or lack of objection made in this response.

8. The Consumer Advocate objects to any request seeking all documents reviewed by its witnesses over an undefined time period. Such a request is ambiguous, overly broad, burdensome and is not likely to lead to the discovery of admissible evidence.

9. The Consumer Advocate expressly incorporates these general objections into its responses set forth below.

RESPONSES

DISCOVERY REQUEST NO. 15:

If the CAPD relies on any facts that were not specifically identified or discussed in the direct testimony that has been submitted on behalf of the CAPD in this proceeding, whether related to issues of credibility or any other issue, to support your contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 04-00288 should not be approved by the Tennessee Regulatory Authority

("TRA"), identify or state each such fact with specificity.

RESPONSE: Subject to and without waiving any objections stated above, the Consumer Advocate responds to the specific request as follows: See enclosed documents and CD (where document is available in electronic format). In addition, the Consumer Advocate may rely on the information and documents filed and contained within TRA Docket Nos. 04-00288, 03-00118, and 99-00891.

DISCOVERY REQUEST NO. 16:

If the CAPD relies on any documents, photographs, or any other articles or things whatsoever that were not attached to the direct testimony that has been submitted on behalf of the CAPD in this proceeding, whether as to issues of credibility or any other issue, to support the CAPD's contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 04-00288 should not be approved, produce each such document, photograph, or any other article or thing whatsoever.

RESPONSE: Subject to and without waiving any objections stated above, the Consumer Advocate responds to the specific request as follows: See response to Discovery Request No. 15, above.

DISCOVERY REQUEST NO. 17:

Provide in electronic media all exhibits, schedules, work papers, and other documents that were attached to or produced in connection with the direct testimony that the CAPD submitted in this proceeding, and provide in electronic media and in hard copy all underlying

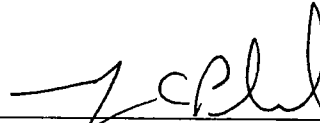
work papers upon which those exhibits, schedules, work papers, and other documents were based or were otherwise derived.

RESPONSE: Subject to and without waiving any objections stated above, the Consumer Advocate responds to the specific request as follows: Hardcopies of the testimony, exhibits, and work papers of the Consumer Advocate were filed and served on December 23, 2004, and are available in electronic media from the TRA's website at the following URLs:

1. <http://www.state.tn.us/tra/orders/2004/0400288bk.pdf> (Direct Testimony of Steve N. Brown).
2. <http://www.state.tn.us/tra/orders/2004/0400288bo.pdf> (Exhibits of Steve N. Brown).
3. <http://www.state.tn.us/tra/orders/2004/0400288bl.pdf> (Direct Testimony and Exhibits of Michael D. Chrysler).
4. <http://www.state.tn.us/tra/orders/2004/0400288bp.pdf> (Affidavit of Michael D. Chrysler).
5. <http://www.state.tn.us/tra/orders/2004/0400288bm.pdf> (Direct Testimony and Exhibits of Terry Buckner).

To the extent not previously provided, see response to Discovery Request No. 15, above.

Respectfully submitted,



TIMOTHY C. PHILLIPS, B.P.R. # 012751
Senior Counsel



JOE R. SHIRLEY, B.P.R. # 022287
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-3533

Dated: January 11th, 2005

CERTIFICATE OF SERVICE

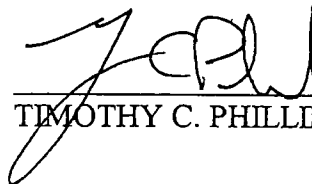
I hereby certify that a true and exact copy of the foregoing has been served via the first-class U.S. mail, postage prepaid, on this 11th day of January, 2005, to the following:

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